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**Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment**

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SIXTH COUNCIL DIRECTIVE of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax : uniform basis of assessment (77/388/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas all Member States have adopted a system of value added tax in accordance with the first and second Council Directives of 11 April 1967 on the harmonization of the laws of the Member States relating to turnover taxes (3);

Whereas the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (4) provides that the budget of the Communities shall, irrespective of other revenue, be financed entirely from the Communities' own resources ; whereas these resources are to include those accruing from value added tax and obtained by applying a common rate of tax on a basis of assessment determined in a uniform manner according to Community rules;

Whereas further progress should be made in the effective removal of restrictions on the movement of persons, goods, services and capital and the integration of national economies;

Whereas account should be taken of the objective of abolishing the imposition of tax on the importation and the remission of tax on exportation in trade between Member States ; whereas it should be ensured that the common system of turnover taxes is non-discriminatory as regards the origin of goods and services, so that a common market permitting fair competition and resembling a real internal market may ultimately be achieved;

Whereas, to enhance the non-discriminatory nature of the tax, the term "taxable person" must be clarified to enable the Member States to extend it to cover persons who occasionally carry out certain transactions;

Whereas the term "taxable transaction" has led to difficulties, in particular as regards transactions treated as taxable transactions ; whereas these concepts must be clarified;

Whereas the determination of the place where taxable transactions are effected has been the subject of conflicts (1)OJ No C 40, 8.4.1974, p. 25. (2)OJ No C 139, 12.11.1974, p. 15. (3)OJ No 71, 14.4.1967, p. 1301/67. (4)OJ No L 94, 28.4.1970, p. 19.

concerning jurisdiction as between Member States, in particular as regards supplies of goods for assembly and the supply of services ; whereas although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods;

Whereas the concepts of chargeable event and of the charge to tax must be harmonized if the introduction and any subsequent alterations of the Community rate are to become operative at the same time in all Member States;

Whereas the taxable base must be harmonized so that the application of the Community rate to taxable transactions leads to comparable results in all the Member States;

Whereas the rates applied by Member States must be such as to allow the normal deduction of the tax applied at the preceding stage;

Whereas a common list of exemptions should be drawn up so that the Communities' own resources may be collected in a uniform manner in all the Member States;

Whereas the rules governing deductions should be harmonized to the extent that they affect the actual amounts collected ; whereas the deductible proportion should be calculated in a similar manner in all the Member States;

Whereas it should be specified which persons are liable to pay tax, in particular as regards services supplied by a person established in another country;

Whereas the obligations of taxpayers must be harmonized as far as possible so as to ensure the necessary safeguards for the collection of taxes in a uniform manner in all the Member States ; whereas taxpayers should, in particular, make a periodic aggregate return of their transactions, relating to both inputs and outputs where this appears necessary for establishing and monitoring the basis of assessment of own resources;

Whereas Member States should nevertheless be able to retain their special schemes for small undertakings, in accordance with common provisions, and with a view to closer harmonization ; whereas Member States should remain free to apply a special scheme involving flat rate rebates of input value added tax to farmers not covered by normal schemes ; whereas the basic principles of this scheme should be established and a common method adopted for calculating the value added of these farmers for the purposes of collecting own resources;

Whereas the uniform application of the provisions of this Directive should be ensured ; whereas to this end a Community procedure for consultation should be laid down ; whereas the setting up of a Value Added Tax Committee would enable the Member States and the Commission to cooperate closely;

Whereas Member States should be able, within certain limits and subject to certain conditions, to take or retain special measures derogating from this Directive in order to simplify the levying of tax or to avoid fraud or tax avoidance;

Whereas it might appear appropriate to authorize Member States to conclude with non-member countries or international organizations agreements containing derogations from this Directive;

Whereas it is vital to provide for a transitional period to allow national laws in specified fields to be gradually adapted,

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I INTRODUCTORY PROVISIONS

##### Article 1

Member States shall modify their present value added tax systems in accordance with the following Articles.

They shall adopt the necessary laws, regulations and administrative provisions so that the systems as modified enter into force at the earliest opportunity and by 1 January 1978 at the latest.

#### TITLE II SCOPE

##### Article 2

The following shall be subject to value added tax: 1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.

#### TITLE III TERRITORIAL APPLICATION

##### Article 3

1. For the purposes of this Directive, the "territory of the country" shall be the area of application of the Treaty establishing the European Economic Community as stipulated in respect of each Member State in Article 227.

2. The following territories of individual Member States shall be excluded from the "territory of the country":

Federal Republic of Germany : the Island of Heligoland, the territory of Büsingen;

Kingdom of Denmark : Greenland;

Republic of Italy Livigno, Campione d'Italia, the Italian waters of Lake Lugano.

3. If the Commission considers that the exclusions provided for in paragraph 2 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council.

#### TITLE IV TAXABLE PERSONS

##### Article 4

1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.
2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.
3. Member States may also treat as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in paragraph 2 and in particular one of the following: (a) the supply before first occupation of buildings or parts of buildings and the land on which they stand ; Member States may determine the conditions of application of this criterion to transformations of buildings and the land on which they stand.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply or the period elapsing between the date of first occupation and the date of subsequent supply, provided that these periods do not exceed five years and two years respectively.

"A building" shall be taken to mean any structure fixed to or in the ground;

(b) the supply of building land.

"Building land" shall mean any unimproved or improved land defined as such by the Member States.

4. The use of the word "independently" in paragraph 1 shall exclude employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Subject to the consultations provided for in Article 29, each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organizational links.

5. States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where treatment as non-taxable persons would lead to significant distortions of competition.

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

Member States may consider activities of these bodies which are exempt under Article 13 or 28 as activities which they engage in as public authorities.

#### TITLE V TAXABLE TRANSACTIONS

##### Article 5

###### Supply of goods

1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.
2. Electric current, gas, heat, refrigeration and the like shall be considered tangible property.
3. Member States may consider the following to be tangible property: (a) certain interest in immovable property;  
(b) rights in rem giving the holder thereof a right of user over immovable property;  
(c) shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof.

4. The following shall also be considered supplies within the meaning of paragraph 1: (a) the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;

(b) the actual handing over of goods, pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms, which provides that in the normal course of events ownership shall pass at the latest upon payment of the final instalment;

(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.

5. Member States may consider the following to be supplies within the meaning of paragraph 1: (a) supplies under a contract to make up work from customer's materials, that is to say delivery by a contractor to his customer of movable property made or assembled by the contractor from materials or objects entrusted to him by the customer for this purpose, whether or not the contractor has provided any part of the materials used;

(b) the handing over of certain works of construction.

6. The application by a taxable person of goods forming part of his business assets for his private use or that of his staff, or the disposal thereof free of charge or more generally their application for purposes other than those of his business, where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible, shall be treated as supplies made for consideration. However, applications for the giving of samples or the making of gifts of small value for the purposes of the taxable person's business shall not be so treated.

7. Member States may treat as supplies made for consideration: (a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the value added tax on such goods, had they been acquired from another taxable person, would not be wholly deductible;

(b) the application of goods by a taxable person for the purposes of a non-taxable transaction, where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a);

(c) except in those cases mentioned in paragraph 8, the retention of goods by a taxable person or his successors when he ceases to carry out a taxable economic activity where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a).

8. In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and in that event the recipient shall be treated as the successor to the transferor. Where appropriate, Member States may take the necessary measures to prevent distortion of competition in cases where the recipient is not wholly liable to tax.

## Article 6

### Supply of services

1. "Supply of services" shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

Such transactions may include inter alia: - assignments of intangible property whether or not it is the subject of a document establishing title,

- obligations to refrain from an act or to tolerate an act or situation,

- the performances of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.

2. The following shall be treated as supplies of services for consideration: (a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.

Member States may derogate from the provisions of this paragraph provided that such derogation does not lead to distortion of competition.

3. In order to prevent distortion of competition and subject to the consultations provided for in Article 29, Member States may treat as a supply of services for consideration the supply by a taxable person of a

service for the purposes of his undertaking where the value added tax on such a service, had it been supplied by another taxable person, would not be wholly deductible.

4. Where a taxable person acting in his own name but on behalf of another takes part in a supply of services, he shall be considered to have received and supplied those services himself.

5. Article 5 (8) shall apply in like manner to the supply of services.

#### Article 7

##### Imports

"Importation of goods" shall mean the entry of goods into the territory of the country as defined in Article 3.

### TITLE VI PLACE OF TAXABLE TRANSACTIONS

#### Article 8

##### Supply of goods

1. The place of supply of goods shall be deemed to be: (a) in the case of goods dispatched or transported either by the supplier or by the person to whom they are supplied or by a third person : the place where the goods are at the time when dispatch or transport to the person to whom they are supplied begins. Where the goods are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled. In cases where the installation or assembly is carried out in a country other than that of the supplier, the Member State into which the goods are imported shall take any necessary steps to avoid double taxation in that State;

(b) in the case of goods not dispatched or transported : the place where the goods are when the supply takes place.

2. By way of derogation from paragraph 1 (a), where the place of departure of the consignment or transport of goods is in a country other than the country of import of those goods, the place of the supply by the importer within the meaning of Article 21 (2) and the place of any subsequent supplies shall be deemed to be within the country of import of the goods.

#### Article 9

##### Supply of services

1. The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2. However: (a) the place of the supply of services connected with immovable property, including the services of estate agents and experts, and of services for preparing and coordinating construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is situated;

(b) the place where transport services are supplied shall be the place where transport takes place, having regard to the distances covered;

(c) the place of the supply of services relating to: - cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organizers of such activities, and where appropriate, the supply of ancillary services,

- ancillary transport activities such as loading, unloading, handling and similar activities,

- valuations of movable tangible property,

- work on movable tangible property,

shall be the place where those services are physically carried out;

(d) in the case of hiring out of movable tangible property, with the exception of all forms of transport, which is exported by the lessor from one Member State with a view to its being used in another Member State, the place of supply of the service shall be the place of utilization;

(e) the place where the following services are supplied when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent

address or usually resides: - transfers and assignments of copyrights, patents, licences, trade marks and similar rights,

- advertising services,

- services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying of information,

- obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this point (e),

- banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes,

- the supply of staff,

- the services of agents who act in the name and for the account of another, when they procure for their principal the services referred to in this point (e).

3. In order to avoid double taxation, non-taxation or the distortion of competition the Member States may, with regard to the supply of services referred to in 2 (e) and the hiring out of movable tangible property consider: (a) the place of supply of services, which under this Article would be situated within the territory of the country, as being situated outside the Community where the effective use and enjoyment of the services take place outside the Community;

(b) the place of supply of services, which under this Article would be situated outside the Community, as being within the territory of the country where the effective use and enjoyment of the services take place within the territory of the country.

## TITLE VII CHARGEABLE EVENT AND CHARGEABILITY OF TAX

### Article 10

1. (a) "Chargeable event" shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled.

(b) The tax becomes "chargeable" when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.

2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. Deliveries of goods other than those referred to in Article 5 (4) (b) and supplies of services which give rise to successive statements of account or payments shall be regarded as being completed at the time when the periods to which such statements of account or payments pertain expire.

However, where a payment is to be made on account before the goods are delivered or the services are performed, the tax shall become chargeable on receipt of the payment and on the amount received.

By way of derogation from the above provisions, Member States may provide that the tax shall become chargeable, for certain transactions or for certain categories of taxable person, either: - no later than the issue of the invoice or of the document serving as invoice, or

- no later than receipt of the price, or

- where an invoice or document serving as invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

3. As regards imported goods, the chargeable event shall occur and the tax shall become chargeable at the time when goods enter the territory of the country as defined in Article 3.

Where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, Member States may link the chargeable event and the date when the tax becomes chargeable with those laid down for these Community duties.

In cases where imported goods are not subject to any of these Community duties, Member States may apply the provisions in force governing customs duties as regards the chargeable event and the date when the tax becomes chargeable.

Where goods are placed on importation under one of the arrangements provided for in Article 16 (1) A or under arrangements for transit or temporary admission, the chargeable event and the date when the tax becomes chargeable shall occur only when the goods cease to be covered by these arrangements and are declared for home use.

## TITLE VIII TAXABLE AMOUNT

## Article 11

A. Within the territory of the country 1. The taxable amount shall be: (a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;

(b) in respect of supplies referred to in Article 5 (6) and (7), the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined as the time of supply;

(c) in respect of supplies referred to in Article 6 (2), the full cost to the taxable person of providing the services;

(d) in respect of supplies referred to in Article 6 (3), the open market value of the services supplied.

"Open market value" of services shall mean the amount which a customer at the marketing stage at which the supply takes place would have to pay to a supplier at arm's length within the territory of the country at the time of the supply under conditions of fair competition to obtain the services in question.

2. The taxable amount shall include: (a) taxes, duties, levies and charges, excluding the value added tax itself;

(b) incidental expenses such as commission, packing, transport and insurance costs charged by the supplier to the purchaser or customer. Expenses covered by a separate agreement may be considered to be incidental expenses by the Member States.

3. The taxable amount shall not include: (a) price reductions by way of discount for early payment;

(b) price discounts and rebates allowed to the customer and accounted for at the time of the supply;

(c) the amounts received by a taxable person from his purchaser or customer as repayment for expenses paid out in the name and for the account of the latter and which are entered in his books in a suspense account. The taxable person must furnish proof of the actual amount of this expenditure and may not deduct any tax which may have been charged on these transactions.

B. Importation of goods 1. The taxable amount shall be: (a) the price paid or to be paid by the importer, where this price is the sole consideration defined in A (1) (a);

(b) the open market value, where no price is paid or where the price paid or to be paid is not the sole consideration for the imported goods.

"Open market value" of imported goods shall mean the amount which an importer at the marketing stage at which the importation takes place would have to pay to a supplier at arm's length in the country from which the goods are exported at the time when the tax becomes chargeable under conditions of fair competition to obtain the goods in question.

2. Member States may adopt as taxable amount the value defined in Regulation (EEC) No 803/68 (1). (1) OJ No L 148, 28.6.1968, p. 6.

3. The taxable amount shall include, in so far as they are not already included: (a) taxes, duties, levies and other charges due outside the country of importation and those due by reason of importation, excluding the value added tax to be levied;

(b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the country.

"First place of destination" shall mean the place mentioned on the consignment note or any other transport document by means of which the goods are imported into the country of importation. In the absence of such an indication, the first place of destination shall be taken to be the place of the first transfer of cargo in that country.

Equally, the Member States may include in the taxable amount the incidental expenses referred to above where they result from transport to another place of destination, if the latter is known at the time when the chargeable event occurs.

4. The taxable amount shall not include those factors referred to in A (3) (a) and (b).

5. When goods have been temporarily exported and are re-imported after having undergone abroad repair, processing or adaptation, or after having been made up or reworked abroad, and the re-importation is not exempt under the provisions of Article 14 (1) (f), Member States shall take steps to ensure that the treatment of the goods for value added tax purposes is the same as that which would have applied to the goods in question had the above operations been carried out within the territory of the country.

C. Miscellaneous provisions 1. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.

2. Where information for determining the taxable amount is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate shall be determined in accordance with Article 12 of Regulation (EEC) No 803/68.

3. As regards returnable packing costs, Member States may: - either exclude them from the taxable amount and take the necessary measures to see that this amount is adjusted if the packing is not returned,

- or include them in the taxable amount and take the necessary measures to see that this amount is adjusted where the packing is in fact returned.

## TITLE IX RATES

### Article 12

1. The rate applicable to taxable transactions shall be that in force at the time of the chargeable event. However: (a) in the cases provided for in the second and third subparagraphs of Article 10 (2), the rate to be used shall be that in force when the tax becomes chargeable;

(b) in the cases provided for in the second and third subparagraphs of Article 10 (3), the rate applicable shall be that in force at the time when application is made for the goods to be released for home use.

2. In the event of changes in the rates, Member States may: - effect adjustments in the cases provided for in paragraph 1 (a) in order to take account of the rate applicable at the time when the goods or services were supplied,

- adopt all appropriate transitional measures.

3. The standard rate of value added tax shall be fixed by each Member State as a percentage of the taxable amount and shall be the same for the supply of goods and for the supply of services.

4. In certain cases, the supply of goods or services may be made subject to increased or reduced rates. Each reduced rate shall be so fixed that the amount of value added tax resulting from the application thereof shall be such as in the normal way to permit the deduction therefrom of the whole of the value added tax deductible under the provisions of Article 17.

5. The rate applicable on the importation of goods shall be that applied to the supply of like goods within the territory of the country.

## TITLE X EXEMPTIONS

### Article 13

Exemptions within the territory of the country

A. Exemptions for certain activities in the public interest 1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse: (a) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognized establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

(d) supplies of human organs, blood and milk;

(e) services supplied by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians;

(f) services supplied by independent groups of persons whose activities are exempt from or are not subject to value added tax, for the purpose of rendering their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition;

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organizations recognized as charitable by the Member State concerned;

(h) the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organizations recognized as charitable by the Member State concerned;

(i) children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, provided by bodies governed by public law having such as their aim or by other organizations defined by the Member State concerned as having similar objects;

(j) tuition given privately by teachers and covering school or university education;

(k) certain supplies of staff by religious or philosophical institutions for the purpose of subparagraphs (b), (g), (h) and (i) of this Article and with a view to spiritual welfare;

(l) supply of services and goods closely linked thereto for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit-making organizations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

(m) certain services closely linked to sport or physical education supplied by non-profit-making organizations to persons taking part in sport or physical education;

(n) certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by other cultural bodies recognized by the Member State concerned;

(o) the supply of services and goods by organizations whose activities are exempt under the provisions of subparagraphs (b), (g), (h), (i), (l), (m) and (n) above in connection with fund-raising events organized exclusively for their own benefit provided that exemption is not likely to cause distortion of competition. Member States may introduce any necessary restrictions in particular as regards the number of events or the amount of receipts which give entitlement to exemption;

(p) the supply of transport services for sick or injured persons in vehicles specially designed for the purpose by duly authorized bodies;

(q) activities of public radio and television bodies other than those of a commercial nature.

2. (a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1) (b), (g), (h), (i), (l), (m) and (n) of this Article subject in each individual case to one or more of the following conditions: - they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,

- they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,

- they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax,

- exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.

(b) The supply of services or goods shall not be granted exemption as provided for in (1) (b), (g), (h), (i), (l), (m) and (n) above if: - it is not essential to the transactions exempted,

- its basic purpose is to obtain additional income for the organization by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax.

#### B. Other exemptions

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse: (a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

- (b) the leasing or letting of immovable property excluding: 1. the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites;
2. the letting of premises and sites for parking vehicles;
  3. lettings of permanently installed equipment and machinery;
  4. hire of safes.

Member States may apply further exclusions to the scope of this exemption;

(c) supplies of goods used wholly for an activity exempted under this Article or under Article 28 (3) (b) when these goods have not given rise to the right to deduction, or of goods on the acquisition or production of which, by virtue of Article 17 (6), value added tax did not become deductible;

(d) the following transactions: 1. the granting and the negotiation of credit and the management of credit by the person granting it;

2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items ; "collectors' items" shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

5. transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding: - documents establishing title to goods,

- the rights or securities referred to in Article 5 (3);

6. management of special investment funds as defined by Member States;

(e) the supply at face value of postage stamps valid for use for postal services within the territory of the country, fiscal stamps, and other similar stamps;

(f) betting, lotteries and other forms of gambling, subject to conditions and limitations laid down by each Member State;

(g) the supply of buildings or parts thereof, and of the land on which they stand, other than as described in Article 4 (3) (a);

(h) the supply of land which has not been built on other than building land as described in Article 4 (3) (b).

#### C. Options

Member States may allow taxpayers a right of option for taxation in cases of: (a) letting and leasing of immovable property;

(b) the transactions covered in B (d) (g) and (h) above.

Member States may restrict the scope of this right of option and shall fix the details of its use.

#### Article 14

##### Exemptions on importation

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemption and of preventing any possible evasion, avoidance or abuse: (a) final importation of goods of which the supply by a taxable person would in all circumstances be exempted within the country;

(b) importation of goods under a declaration for transit arrangements;

(c) importation of goods declared to be under temporary importation arrangements, which thereby qualify for exemption from customs duties, or which would so qualify if they were imported from a third country;

(d) final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff or which would qualify therefor if they were imported from a third country. However, Member States shall have the option of not granting exemption where this would be liable to have a serious effect on conditions of competition on the home market;

- (e) reimportation by the person who exported them of goods in the state in which they were exported, where they qualify for exemption from customs duties or would qualify therefor if they were imported from a third country;
- (f) the re-importation of movable tangible property by the person who exported it, or by another person on his account, where that property has while in another Member State undergone work which has been taxed without the right to deduction or refund;
- (g) importations of goods: - under diplomatic and consular arrangements, which qualify for exemption from customs duties or would qualify therefor if they were imported from a third country,
  - by international organizations recognized as such by the public authorities of the host country, and by members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements,
  - into the territory of Member States which are parties to the North Atlantic Treaty by the armed forces of other States which are parties to that Treaty for the use of such forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort:
- (h) importation into ports by sea fishing undertakings of their catches, unprocessed or after undergoing preservation for marketing but before being supplied;
- (i) the supply of services, in connection with the importation of goods where the value of such services is included in the taxable amount in accordance with Article 11 B (3) (b);
- (j) importation of gold by Central Banks.

2. The Commission shall submit to the Council at the earliest opportunity proposals designed to lay down Community tax rules clarifying the scope of the exemptions referred to in paragraph 1 and detailed rules for their implementation.

Until the entry into force of these rules, Member States may: - maintain their national provisions in force on matters related to the above provisions,

- adapt their national provisions to minimize distortion of competition and in particular the non-imposition or double imposition of value added tax within the Community,
- use whatever administrative procedures they consider most appropriate to achieve exemption.

Member States shall inform the Commission, which shall inform the other Member States, of the measures they have adopted and are adopting pursuant to the preceding provisions.

#### Article 15

##### Exemption of exports and like transactions and international transport

Without prejudice to other Community provisions Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse: 1. the supply of goods dispatched or transported to a destination outside the territory of the country as defined in Article 3 by or on behalf of the vendor;

2. the supply of goods dispatched or transported to a destination outside the territory of the country as defined in Article 3 by or on behalf of a purchaser not established within the territory of the country, with the exception of goods transported by the purchaser himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use;

3. the supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work in the territory of the country as defined in Article 3, and dispatched or transported out of the territory of that country by the person providing the services or by his customer who is not established within the territory of the country or on behalf of either of them;

4. the supply of goods for the fuelling and provisioning of vessels: (a) used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities;

(b) used for rescue or assistance at sea, or for inshore fishing, with the exception, for the latter, of ships' provisions;

(c) of war, as defined in subheading 89.01 A of the Common Customs Tariff, leaving the country and bound for foreign ports or anchorages.

The Member States may, however, restrict the scope of this exemption until the implementation of Community tax rules in this field;

5. the supply, modification, repair, maintenance, chartering and hiring of the sea-going vessels referred to in paragraph 4 (a) and (b) and the supply, hiring, repair and maintenance of equipment - including fishing equipment - incorporated or used therein;
6. the supply, modification, repair, maintenance, chartering and hiring of aircraft used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used therein;
7. the supply of goods for the fuelling and provisioning of aircraft referred to in paragraph 6;
8. the supply of services other than those referred to in paragraph 5, to meet the direct needs of the sea-going vessels referred to in that paragraph or of their cargoes;
9. the supply of services other than those referred to in paragraph 6, to meet the direct needs of aircraft referred to in that paragraph or of their cargoes;
10. supplies of goods and services: - under diplomatic and consular arrangements,  
- to international organizations recognized as such by the public authorities of the host country, and to members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements,  
- effected within a Member State which is a party to the North Atlantic Treaty and intended either for the use of the forces of other States which are parties to that Treaty or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort.

This exemption shall be subject to conditions and limitations laid down by Member States until Community tax rules are adopted.

The exemption may be implemented by means of a refund of the tax;

11. supplies of gold to Central Banks;
12. goods supplied to approved bodies which export them as part of their humanitarian, charitable or teaching activities abroad. This exemption may be implemented by means of a refund of the tax;
13. the supply of services including transport and ancillary transactions but excluding the supply of services exempted under Article 13, when these are directly linked to the transit or the export of goods, or to the imports of goods benefiting from the provisions of Articles 14 (1) (b) and (c), and 16 (1);
14. services supplied by brokers and other intermediaries, acting in the name and for account of another person, where they form part of transactions specified in this Article, or of transactions carried out outside the territory of the country as defined in Article 3.

This exemption does not apply to travel agents who supply in the name and for account of the traveller services which are supplied in other Member States.

#### Article 16

##### Special exemptions linked to international goods traffic

1. Without prejudice to other Community provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to relieve from value added tax all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of value added tax charged at entry for home use corresponds to the amount of the tax which should have been charged had each of these transactions been taxed on import or within the territory of the country:
  - A. importation of goods which are intended to be:
    - (a) produced to customs and, where applicable, placed in temporary storage within the meaning of Directive 68/312/EEC (1);
    - (b) placed under free zone arrangements such as those within the meaning of Directive 69/75/EEC (2);
    - (c) placed under customs warehousing arrangements within the meaning of Directive 69/74/EEC (3);
    - (d) admitted into the waters and foreshores referred to in Article 4 of Regulation (EEC) No 1496/68 (4);
    - (e) placed under warehousing arrangements other than customs, or inward processing arrangements;
  - B. supplies of goods shipped or carried to places specified in A above and supplies of services related to such supplies;
  - C. supplies of goods and services carried out in the places listed in A above and still subject to one of the arrangements specified therein;
  - D. supplies of goods still subject to arrangements for transit or temporary importation specified in Article 14 (1) (b) and (c) as well as supplies of services related to such supplies.

2. Subject to the consultation provided for in Article 29, Member States may opt to exempt imports for and supplies of goods to a taxable person intending to export them as they are or after processing, as well as supplies of services linked with his export business, up to a maximum equal to the value of his exports during the preceding 12 months.

3. The Commission shall submit to the Council at the earliest opportunity proposals concerning common arrangements for applying value added tax to the transactions referred to in paragraphs 1 and 2.

## TITLE XI DEDUCTIONS

### Article 17

#### Origin and scope of the right to deduct

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay: (a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) value added tax due or paid in respect of imported goods; (1)OJ No L 194, 6.8.1968, p. 13. (2)OJ No L 58, 8.3.1969, p. 11. (3)OJ No L 58, 8.3.1969, p. 7. (4)OJ No L 238, 28.9.1968, p. 1.

(c) value added tax due under Articles 5 (7) (a) and 6 (3).

3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of: (a) transactions relating to the economic activities as referred to in Article 4 (2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

(b) transactions which are exempt under Article 14 (1) (i) and under Articles 15 and 16 (1) (B), (C) and (D), and paragraph 2;

(c) any of the transactions exempted under Article 13 B (a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.

4. The Council shall endeavour to adopt before 31 December 1977, on a proposal from the Commission and acting unanimously, Community rules laying down the arrangements under which refunds are to be made in accordance with paragraph 3 to taxable persons not established in the territory of the country. Until such Community arrangements enter into force, Member States shall themselves determine the method by which the refund concerned shall be made. Where the taxable person is not resident in the territory of the Community, Member States may refuse the refund or impose supplementary conditions.

5. As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

However, Member States may: (a) authorize the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) compel the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorize or compel the taxable person to make the deduction on the basis of the use of all or part of the goods and services;

(d) authorize or compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph, in respect of all goods and services used for all transactions referred to therein;

(e) provide that where the value added tax which is not deductible by the taxable person is insignificant it shall be treated as nil.

6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of value added tax. Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.

7. Subject to the consultation provided for in Article 29, each Member State may, for cyclical economic reasons, totally or partly exclude all or some capital goods or other goods from the system of deductions. To maintain identical conditions of competition, Member States may, instead of refusing deduction, tax the goods manufactured by the taxable person himself or which he has purchased in the country or imported, in such a way that the tax does not exceed the value added tax which would have been charged on the acquisition of similar goods.

#### Article 18

Rules governing the exercise of the right to deduct

1. To exercise his right to deduct, the taxable person must: (a) in respect of deductions under Article 17 (2) (a), hold an invoice, drawn up in accordance with Article 22 (3);

(b) in respect of deductions under Article 17 (2) (b), hold an import document, specifying him as consignee or importer, and stating or permitting calculation of the amount of tax due;

(c) in respect of deductions under Article 17 (2) (c), comply with the formalities established by each Member State;

(d) when he is required to pay the tax as a customer or purchaser where Article 21 (1) applies, comply with the formalities laid down by each Member State.

2. The taxable person shall effect the deduction by subtracting from the total amount of value added tax due for a given tax period the total amount of the tax in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1.

However, Member States may require that as regards taxable persons who carry out occasional transactions as defined in Article 4 (3), the right to deduct shall be exercised only at the time of the supply.

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorized to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2.

4. Where for a given tax period the amount of authorized deductions exceeds the amount of tax due, the Member States may either make a refund or carry the excess forward to the following period according to conditions which they shall determine.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.

#### Article 19

Calculation of the deductible proportion

1. The proportion deductible under the first subparagraph of Article 17 (5) shall be made up of a fraction having: - as numerator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions in respect of which value added tax is deductible under Article 17 (2) and (3),

- as denominator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible. The Member States may also include in the denominator the amount of subsidies, other than those specified in Article 11 A (1) (a).

The proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next unit.

2. By way of derogation from the provisions of paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business. Amounts of turnover attributable to transactions specified in Article 13 B (d), in so far as these are incidental transactions, and to incidental real estate and financial transactions shall also be excluded. Where Member States exercise the option provided under Article 20 (5) not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

3. The provisional proportion for a year shall be that calculated on the basis of the preceding year's transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated provisionally, under supervision of the tax authorities, by the taxable person from his own forecasts. However, Member States may retain their current rules.

Deductions made on the basis of such provisional proportion shall be adjusted when the final proportion is fixed during the next year.

## Article 20

### Adjustments of deductions

1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular: (a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained ; however, adjustment shall not be made in cases of transactions remaining totally or partially unpaid and of destruction, loss or theft of property duly proved or confirmed, nor in the case of applications for the purpose of making gifts of small value and giving samples specified in Article 5 (6). However, Member States may require adjustment in cases of transactions remaining totally or partially unpaid and of theft.

2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one-fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

By way of derogation from the preceding subparagraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods the adjustment period may be extended up to 10 years.

3. In the case of supply during the period of adjustment capital goods shall be regarded as if they had still been applied for business use by the taxable person until expiry of the period of adjustment. Such business activities are presumed to be fully taxed in cases where the delivery of the said goods is taxed ; they are presumed to be fully exempt where the delivery is exempt. The adjustment shall be made only once for the whole period of adjustment still to be covered.

However, in the latter case, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which value added tax is deductible.

4. For the purposes of applying the provisions of paragraphs 2 and 3, Member States may: - define the concept of capital goods,

- indicate the amount of the tax which is to be taken into consideration for adjustment,
- adopt any suitable measures with a view to ensuring that adjustment does not involve any unjustified advantage,
- permit administrative simplifications.

5. If in any Member State the practical effect of applying paragraphs 2 and 3 would be insignificant, that Member State may subject to the consultation provided for in Article 29 forego application of these paragraphs having regard to the need to avoid distortion of competition, the overall tax effect in the Member State concerned and the need for due economy of administration.

6. Where the taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all necessary measures to ensure that the taxable person neither benefits nor is prejudiced unjustifiably.

## TITLE XII PERSONS LIABLE FOR PAYMENT FOR TAX

### Article 21

#### Persons liable to pay tax to the authorities

The following shall be liable to pay value added tax: 1. under the internal system: (a) taxable persons who carry out taxable transactions other than those referred to in Article 9 (2) (e) and carried out by a taxable person resident abroad. When the taxable transaction is effected by a taxable person resident abroad Member States may adopt arrangements whereby tax is payable by someone other than the taxable person residing abroad. Inter alia a tax representative or other person for whom the taxable transaction is carried out may be designated as such other person. The Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;

(b) persons to whom services covered by Article 9 (2) (e) are supplied and carried out by a taxable person resident abroad. However, Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax;

(c) any person who mentions the value added tax on an invoice or other document serving as invoice;  
2. on importation : the person or persons designated or accepted as being liable by the Member States into which the goods are imported.

## TITLE XIII OBLIGATIONS OF PERSONS LIABLE FOR PAYMENT

### Article 22

#### Obligations under the internal system

1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

2. Every taxable person shall keep accounts in sufficient detail to permit application of the value added tax and inspection by the tax authority.

3. (a) Every taxable person shall issue an invoice, or other document serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof.

Every taxable person shall likewise issue an invoice in respect of payments on account made to him by another taxable person before the supply of goods or services is effected or completed.

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

(c) The Member States shall determine the criteria for considering whether a document serves as an invoice.

4. Every taxable person shall submit a return within an interval to be determined by each Member State. This interval may not exceed two months following the end of each tax period. The tax period may be fixed by Member States as a month, two months, or a quarter. However, Member States may fix different periods provided that these do not exceed a year.

The return must set out all the information needed to calculate the tax that has become chargeable and the deductions to be made, including, where appropriate, and in so far as it seems necessary for the establishment of the tax basis, the total amount of the transactions relative to such tax and deductions, and the total amount of the exempted supplies.

5. Every taxable person shall pay the net amount of the value added tax when submitting the return. The Member States may, however, fix a different date for the payment of the amount or may demand an interim payment.

6. Member States may require a taxable person to submit a statement, including the information specified in paragraph 4, and concerning all transactions carried out the preceding year. This statement must provide all the information necessary for any adjustments.

7. Member States shall take the necessary measures to ensure that those persons who, in accordance with Article 21 (1) (a) and (b), are considered to be liable to pay the tax instead of a taxable person established in another country or who are jointly, and severally liable for the payment, shall comply with the above obligations relating to declaration and payment.

8. Without prejudice to the provisions to be adopted pursuant to Article 17 (4), Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

9. Member States may release taxable persons: - from certain obligations,  
- from all obligations where those taxable persons carry out only exempt transactions,  
- from the payment of the tax due where the amount is insignificant.

### Article 23

#### Obligations in respect of imports

As regards imported goods, Member States shall lay down the detailed rules for the making of the declarations and payments.

In particular, Member States may provide that the value added tax payable on importation of goods by taxable persons or persons liable to tax or certain categories of these two need not be paid at the time of importation, on condition that the tax is mentioned as such in a return to be submitted under Article 22 (4).

## TITLE XIV SPECIAL SCHEMES

## Article 24

### Special scheme for small undertakings

1. Member States which might encounter difficulties in applying the normal tax scheme to small undertakings by reason of their activities or structure shall have the option, under such conditions and within such limits as they may set but subject to the consultation provided for in Article 29, of applying simplified procedures such as flat-rate schemes for charging and collecting the tax provided they do not lead to a reduction thereof.

2. Until a date to be fixed by the Council acting unanimously on a proposal from the Commission, but which shall not be later than that on which the charging of tax on imports and the remission of tax on exports in trade between the Member States are abolished: (a) Member States which have made use of the option under Article 14 of the second Council Directive of 11 April 1967 to introduce exemptions or graduated tax relief may retain them and the arrangements for applying them if they conform with the value added tax system.

Those Member States which apply an exemption from tax to taxable persons whose annual turnover is less than the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted, may increase this exemption up to 5 000 European units of account.

Member States which apply graduated tax relief may neither increase the ceiling of the graduated tax reliefs nor render the conditions for the granting of it more favourable;

(b) Member States which have not made use of this option may grant an exemption from tax to taxable persons whose annual turnover is at the maximum equal to the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted ; where appropriate, they may grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by the Member States for the application of exemption;

(c) Member States which apply an exemption from tax to taxable persons whose annual turnover is equal to or higher than the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted, may increase it in order to maintain its value in real terms.

3. The concepts of exemption and graduated tax relief shall apply to the supply of goods and services by small undertakings.

Member States may exclude certain transactions from the arrangements provided for in paragraph 2. The provisions of paragraph 2 shall not, in any case, apply to the transactions referred to in Article 4 (3).

4. The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount, exclusive of value added tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28 (2), and the amount of the transactions exempted pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13 B (d), and insurance services, unless these transactions are ancillary transactions.

However, disposals of tangible or intangible capital assets of an undertaking shall not be taken into account for the purposes of calculating turnover.

5. Taxable persons exempt from tax shall not be entitled to deduct tax in accordance with the provisions of Article 17, nor to show the tax on their invoices or on any other documents serving as invoices.

6. Taxable persons eligible for exemption from tax may opt either for the normal value added tax scheme or for the simplified procedures referred to in paragraph 1. In this case they shall be entitled to any graduated tax relief which may be laid down by national legislation.

7. Subject to the application of paragraph 1, taxable persons enjoying graduated relief shall be treated as taxable persons subject to the normal value added tax scheme.

8. At four-yearly intervals, and for the first time on 1 January 1982, and after consultation of the Member States, the Commission shall report to the Council on the application of the provisions of this Article. It shall as far as may be necessary, and taking into account the need to ensure the long-term convergence of national regulations, attach to this report proposals for: (a) improvements to be made to the special scheme for small undertakings;

(b) the adaptation of national systems as regards exemptions and graduated value added tax relief;

(c) the adaptation of the limit of 5 000 European units of account mentioned in paragraph 2.

9. The Council will decide at the appropriate time whether the realization of the objective referred to in Article 4 of the first Council Directive of 11 April 1967 requires the introduction of a special scheme for small undertakings and will, if appropriate, decide on the limits and common implementing conditions of this scheme. Until the introduction of such a scheme, Member States may retain their own special schemes which they will apply in accordance with the provisions of this Article and of subsequent acts of the Council.

#### Article 25

##### Common flat-rate scheme for farmers

1. Where the application to farmers of the normal value added tax scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the value added tax charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

2. For the purposes of this Article, the following definitions shall apply: - "farmer" : a taxable person who carries on his activity in one of the undertakings defined below,

- "agricultural, forestry or fisheries undertakings" : an undertaking considered to be such by each Member State within the framework of the production activities listed in Annex A,

- "flat-rate farmer" : a farmer subject to the flat-rate scheme provided for in paragraphs 3 et seq.,

- "agricultural products" : goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex A,

- "agricultural service" : any service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him,

- "value added tax charge on inputs" : the amount of the total value added tax attaching to the goods and services purchased by all agricultural, forestry and fisheries undertakings of each Member State subject to the flat-rate scheme where such tax would be deductible under Article 17 by a farmer subject to the normal value added tax scheme,

- "flat-rate compensation percentages" : the percentages fixed by Member States in accordance with paragraph 3 and applied by them in the cases specified in paragraph 5 to enable flat-rate farmers to offset at a fixed rate the value added tax charge on inputs,

- "flat-rate compensation" : the amount arrived at by applying the flat-rate compensation percentage provided for in paragraph 3 to the turnover of the flat-rate farmer in the cases referred to in paragraph 5.

3. Member States shall fix the flat-rate compensation percentages, where necessary, and shall notify the Commission before applying them. Such percentages shall be based on macro-economic statistics for flat-rate farmers alone for the preceding three years. They may not be used to obtain for flat-rate farmers refunds greater than the value added tax charges on inputs. Member States shall have the option of reducing such percentages to a nil rate. The percentage may be rounded up or down to the nearest half point.

Member States may fix varying flat-rate compensation percentages for forestry, for the different subdivisions of agriculture and for fisheries.

4. Member States may release flat-rate farmers from the obligations imposed upon taxable persons by Article 22.

5. The flat-rate percentages provided for in paragraph 3 shall be applied to the price, exclusive of tax, of the agricultural products and agricultural services supplied by the flat-rate farmers to taxable persons other than a flat-rate farmer. This compensation shall exclude all other forms of deduction.

6. Member States may provide for the flat-rate compensation to be paid: (a) either by the taxable person to whom the goods or services are supplied. In this case, the taxable person to whom the goods or services are supplied shall be authorized, following the procedure laid down by the Member States, to deduct from the value added tax for which he is liable, the amount of the flat-rate compensation has paid to the flat-rate farmers;

(b) or by the public authorities.

7. Member States shall make all necessary provisions to check properly the payment of the flat-rate compensation to the flat-rate farmers.

8. As regards all supplies of agricultural products and agricultural services other than those covered by paragraph 5, the flat-rate compensation is deemed to be paid by the purchaser or customer.

9. Each Member State may exclude from the flat-rate scheme certain categories of farmers and farmers for whom the application of the normal value added tax scheme, or the simplified scheme provided for in Article 24 (1), would not give rise to administrative difficulties.

10. Every flat-rate farmer may opt, subject to the rules and conditions to be laid down by each Member State, for application of the normal value added tax scheme or, as the case may be, the simplified scheme provided for in Article 24 (1).

11. The Commission shall, before the end of the fifth year following the entry into force of this Directive, present to the Council new proposals concerning the application of the value added tax to transactions in respect of agricultural products and services.

12. When they take up the option provided for in this Article the Member States shall fix the uniform basis of assessment of the value added tax in order to apply the scheme of own resources using the common method of calculation in Annex C.

#### Article 26

##### Special scheme for travel agents

1. Member States shall apply value added tax to the operations of travel agents in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies and services of other taxable persons in the provision of travel facilities. This Article shall not apply to travel agents who are acting only as intermediaries and accounting for tax in accordance with Article 11 A (3) (c). In this Article travel agents include tour operators.

2. All transactions performed by the travel agent in respect of a journey shall be treated as a single service supplied by the travel agent to the traveller. It shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has provided the services. The taxable amount and the price exclusive of tax, within the meaning of Article 22 (3) (b), in respect of this service shall be the travel agent's margin, that is to say, the difference between the total amount to be paid by the traveller, exclusive of value added tax, and the actual cost to the travel agent of supplies and services provided by other taxable persons where these transactions are for the direct benefit of the traveller.

3. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as an exempted intermediary activity under Article 15 (14). Where these transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

4. Tax charged to the travel agent by other taxable persons on the transactions described in paragraph 2 which are for the direct benefit of the traveller, shall not be eligible for deduction or refund in any Member State.

#### TITLE XV SIMPLIFICATION PROCEDURES

##### Article 27

1. The Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the amount of tax due at the final consumption stage.

2. A Member State wishing to introduce the measures referred to in paragraph 1 shall inform the Commission of them and shall provide the Commission with all relevant information.

3. The Commission shall inform the other Member States of the proposed measures within one month.

4. The Council's decision shall be deemed to have been adopted if, within two months of the other Member States being informed as laid down in the previous paragraph, neither the Commission nor any Member State has requested that the matter be raised by the Council.

5. Those Member States which apply on 1 January 1977 special measures of the type referred to in paragraph 1 above may retain them providing they notify the Commission of them before 1 January 1978 and providing that where such derogations are designed to simplify the procedure for charging tax they conform with the requirement laid down in paragraph 1 above.

#### TITLE XVI TRANSITIONAL PROVISIONS

##### Article 28

1. Any provisions brought into force by the Member States under the provisions of the first four indents of Article 17 of the second Council Directive of 11 April 1967 shall cease to apply, in each Member State, as from the respective dates on which the provisions referred to in the second paragraph of Article 1 of this Directive come into force.

2. Reduced rates and exemptions with refund of the tax paid at the preceding stage which are in force on 31 December 1975, and which satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained until a date which shall be fixed by the Council, acting unanimously on a proposal from the Commission, but which shall not be later than that on which the charging of tax on imports and the remission of tax on exports in trade between the Member States are abolished. Member States shall adopt the measures necessary to ensure that taxable persons declare the data required to determine own resources relating to these operations.

On the basis of a report from the Commission, the Council shall review the abovementioned reduced rates and exemptions every five years and, acting unanimously on a proposal from the Commission, shall where appropriate, adopt the measures required to ensure the progressive abolition thereof.

3. During the transitional period referred to in paragraph 4, Member States may: (a) continue to subject to tax the transactions exempt under Article 13 or 15 set out in Annex E to this Directive;

(b) continue to exempt the activities set out in Annex F under conditions existing in the Member State concerned;

(c) grant to taxable persons the option for taxation of exempt transactions under the conditions set out in Annex G;

(d) continue to apply provisions derogating from the principle of immediate deduction laid down in the first paragraph of Article 18 (2);

(e) continue to apply measures derogating from the provisions of Articles 5 (4) (c), 6 (4) and 11 A (3) (c);

(f) provide that for supplies of buildings and building land purchased for the purpose of resale by a taxable person for whom tax on the purchase was not deductible, the taxable amount shall be the difference between the selling price and the purchase price;

(g) by way of derogation from Articles 17 (3) and 26 (3), continue to exempt without repayment of input tax the services of travel agents referred to in Article 26 (3). This derogation shall also apply to travel agents acting in the name and on account of the traveller.

4. The transitional period shall last initially for five years as from 1 January 1978. At the latest six months before the end of this period, and subsequently as necessary, the Council shall review the situation with regard to the derogations set out in paragraph 3 on the basis of a report from the Commission and shall unanimously determine on a proposal from the Commission, whether any or all of these derogations shall be abolished.

5. At the end of the transitional period passenger transport shall be taxed in the country of departure for that part of the journey taking place within the Community according to the detailed rules of procedure to be laid down by the Council acting unanimously on a proposal from the Commission.

## TITLE XVII VALUE ADDED TAX COMMITTEE

### Article 29

1. An Advisory Committee on value added tax, hereinafter called "the Committee", is hereby set up.

2. The Committee shall consist of representatives of the Member States and of the Commission.

The chairman of the Committee shall be a representative of the Commission.

Secretarial services for the Committee shall be provided by the Commission.

3. The Committee shall adopt its own rules of procedure.

4. In addition to points subject to the consultation provided for under this Directive, the Committee shall examine questions raised by its chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of the Community provisions on value added tax.

## TITLE XVIII MISCELLANEOUS

### Article 30

#### International Agreements

The Council, acting unanimously on a proposal from the Commission, may authorize any Member State to conclude with a non-member country or an international organization an agreement which may contain derogations from this Directive. A State wishing to conclude such an agreement shall bring the matter to

the notice of the Commission and provide all the information necessary for it to be considered. The Commission shall inform the other Member States within one month.

The Council's decision shall be deemed to have been adopted if, within two months of the other Member States being informed as laid down in the previous paragraph, the matter has not been raised before the Council.

#### Article 31

##### Unit of account

1. The unit of account used in this Directive shall be the European unit of account (EUA) defined by Decision 75/250/EEC (1).
2. When converting this unit of account into national currencies, Member States shall have the option of rounding the amounts resulting from this conversion either upwards or downwards by up to 10 %.

#### Article 32

##### Second-hand goods

The Council, acting unanimously on a proposal from the Commission, shall adopt before 31 December 1977 a Community taxation system to be applied to used goods, works of art, antiques and collectors' items.

Until this Community system becomes applicable, Member States applying a special system to these items at the time this Directive comes into force may retain that system.

#### Article 33

Without prejudice to other Community provisions, the provisions of this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes. (1)OJ No L 104, 24.4.1975, p. 35.

#### TITLE XIX FINAL PROVISIONS

#### Article 34

For the first time on 1 January 1982 and thereafter every two years, the Commission shall, after consulting the Member States, send the Council a report on the application of the common system of value added tax in the Member States. This report shall be transmitted by the Council to the European Parliament.

#### Article 35

At the appropriate time the Council acting unanimously on a proposal from the Commission, after receiving the opinion of the European Parliament and of the Economic and Social Committee, and in accordance with the interests of the common market, shall adopt further Directives on the common system of value added tax, in particular to restrict progressively or to repeal measures taken by the Member States by way of derogation from the system, in order to achieve complete parallelism of the national value added tax systems and thus permit the attainment of the objective stated in Article 4 of the first Council Directive of 11 April 1967.

#### Article 36

The fourth paragraph of Article 2 and Article 5 of the first Council Directive of 11 April 1967 are repealed.

#### Article 37

Second Council Directive 67/228/EEC of 11 April 1967 on value added tax shall cease to have effect in each Member State as from the respective dates on which the provisions of this Directive are brought into application.

#### Article 38

This Directive is addressed to the Member States.

Done at Brussels, 17 May 1977.

For the Council

The President

J. SILKIN

#### ANNEX A LIST OF AGRICULTURAL PRODUCTION ACTIVITIES

I. CROP PRODUCTION 1. General agriculture, including viticulture

2. Growing of fruit (including olives) and of vegetables, flowers and ornamental plants, both in the open and under glass

3. Production of mushrooms, spices, seeds and propagating materials ; nurseries

## II. STOCK FARMING TOGETHER WITH CULTIVATION 1. General stock farming

2. Poultry farming

3. Rabbit farming

4. Beekeeping

5. Silkworm farming

6. Snail farming

## III. FORESTRY

### IV. FISHERIES 1. Fresh-water fishing

2. Fish farming

3. Breeding of mussels, oysters and other molluscs and crustaceans

4. Frog farming

V. Where a farmer processes, using means normally employed in an agricultural, forestry or fisheries undertaking, products deriving essentially from his agricultural production, such processing shall also be regarded as agricultural production

## ANNEX B LIST OF AGRICULTURAL SERVICES

Supplies of agricultural services which normally play a part in agricultural production shall be considered the supply of agricultural services, and include the following in particular: - field work, reaping and mowing, threshing, baling, collecting, harvesting, sowing and planting

- packing and preparation for market, for example drying, cleaning, grinding, disinfecting and ensilage of agricultural products

- storage of agricultural products

- stock minding, rearing and fattening

- hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings

- technical assistance

- destruction of weeds and pests, dusting and spraying of crops and land

- operation of irrigation and drainage equipment

- lopping, tree felling and other forestry services

## ANNEX C (1) COMMON METHOD OF CALCULATION

I. For the purposes of calculating the value added for all agricultural, forestry and fisheries undertakings, the following shall be taken into account exclusive of value added tax: 1. the value of the total final production including farmers' own consumption of the classes "agricultural products and game" and "wood in the rough" as set out in points IV and V below, plus the output of the processing activities referred to in point V of Annex A;

2. the value of the total inputs required to achieve the production referred to in (1);

3. the value of the gross fixed-asset formation in connection with the activities listed in Annexes A and B.

II. To determine the deductible taxable inputs and outputs of flat-rate farmers, the inputs and outputs of farmers taxed under the normal value added tax scheme shall be deducted from the national accounts, taking into account the same factors as those in paragraph I.

III. The value added for flat-rate farmers is equal to the difference between the value of total final production, exclusive of value added tax, as referred to in point I (1), and the total value of inputs as referred to in point I (2) together with gross fixed-asset formation as referred to in point I (3). All these factors relate to flat-rate farmers only.

IV. AGRICULTURAL PRODUCTS AND GAME >PIC FILE= "T0010819"> (1)The classification used in this Annex is that used in the Economic Accounts for Agriculture of the Statistical Office of the European Communities (SOEC). >PIC FILE= "T0010820">

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#### V. WOOD IN THE ROUGH Coniferous timber for industrial uses

##### Coniferous long timber

- 1 logs (1) fir, spruce, douglas
- (2) pine, larch
- 2 mine timber (1) fir, spruce, douglas
- (2) pine, larch
- 3 other long timber (1) fir, spruce, douglas
- (2) pine, larch

##### Coniferous plywood - 1 fir, spruce, douglas

- 2 pine, larch

##### Coniferous firewood

Fir, spruce, douglas

Pine, larch

##### Leaf-wood for industrial uses

##### Long timber (leaf-wood)

- 1 logs (1) oak
- (2) beech
- (3) poplar
- (4) other
- 2 mine timber (1) oak
- (2) other
- 3 other long timber (1) oak
- (2) beech
- (3) poplar
- (4) other

##### Plywood (leaf) - 1 oak

- 2 beech
- 3 poplar
- 4 other

##### Firewood (leaf)

oak

beech

poplar

other

##### Forestry services (1)

Other products (e.g. bark, cork, resin) (1)I.e. services which are usually performed by forestry undertakings themselves (e.g. felling of timber).

#### ANNEX D LIST OF THE ACTIVITIES REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 4 (5)

##### 1. Telecommunications

2. The supply of water, gas, electricity and steam
  3. The transport of goods
  4. Port and airport services
  5. Passenger transport
  6. Supply of new goods manufactured for sale
  7. The transactions of agricultural intervention agencies in respect of agricultural products carried out pursuant to Regulations on the common organization of the market in these products
  8. The running of trade fairs and exhibitions
  9. Warehousing
  10. The activities of commercial publicity bodies
  11. The activities of travel agencies
  12. The running of staff shops, cooperatives and industrial canteens and similar institutions
  13. Transactions other than those specified in Article 13 A (1) (q), of radio and television bodies
- ANNEX E TRANSACTIONS REFERRED TO IN ARTICLE 28 (3) (A)

1. Transactions referred to in Article 13 A (1) (a) in so far as they relate to parcel post services
2. Transactions referred to in Article 13 A (1) (e)
3. Transactions referred to in Article 13 A (1) (f) other than those of groups of a medical or paramedical nature
4. Transactions referred to in Article 13 A (1) (m)
5. Transactions referred to in Article 13 A (1) (n)
6. Transactions referred to in Article 13 A (1) (p)
7. Transactions referred to in Article 13 A (1) (q)
8. Transactions referred to in Article 13 B (d) (2) in so far as they relate to the services of intermediaries
9. Transactions referred to in Article 13 B (d) (5) in so far as they relate to the services of intermediaries
10. Transactions referred to in Article 13 B (d) (6)
11. Supplies covered by Article 13 B (g) in so far as they are made by taxable persons who were entitled to deduction of input tax on the building concerned
12. Supplies of goods referred to in Article 15 (2)
13. Transactions referred to in Article 15 (6) and (9)
14. Supplies referred to in Article 15 (12)
15. The services of travel agents referred to in Article 26, and those of travel agents acting in the name and on account of the traveller, for journeys outside the Community

ANNEX F TRANSACTIONS REFERRED TO IN ARTICLE 28 (3) (B)

1. Admission to sporting events
2. Services supplied by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the second Council Directive of 11 April 1967
3. Supply of services by means of agricultural machinery for individual or associated agricultural undertakings
4. Supply of greyhounds and thoroughbred horses
5. Telecommunications services supplied by public postal services and supplies of goods incidental thereto
6. Services supplied by undertakers and cremation services, together with goods related thereto
7. Transactions carried out by blind persons or workshops for the blind provided these exemptions do not give rise to significant distortion of competition
8. The supply of goods and services to official bodies responsible for the construction, setting out and maintenance of cemeteries, graves and monuments commemorating war dead
9. Treatment of animals by veterinary surgeons
10. Transactions of hospitals not covered by Article 13 A (1) (b)

11. Services of experts in connection with insurance claim assessments
12. The supply of water by public authorities
13. Management of credit and credit guarantees by a person or a body other than the one which granted the credits
14. Debt collection
15. The safekeeping and management of shares, interests in companies and associations, debentures and other securities or negotiable instruments, excluding documents establishing title to goods or securities referred to in Article 5 (3)
16. Supplies of those buildings and land described in Article 4 (3)
17. Passenger transport  
The transport of goods such as luggage or motor vehicles accompanying passengers and the supply of services related to the transport of passengers, shall only be exempted in so far as the transport of the passengers themselves is exempt
18. The supply, modification, repair, maintenance, chartering and hiring of commercial inland waterway vessels and the supply, hiring, repair and maintenance of equipment incorporated or used therein
19. Supplies of some capital goods after the expiry of the adjustment period for deductions
20. Supplies of recuperable material and fresh industrial waste
21. Goods for the fuelling and provisioning of private boats, proceeding outside the national territory
22. Goods for the fuelling and provisioning of aircraft for private use proceeding outside the national territory
23. The supply, modification, repair, maintenance, chartering and hiring of aircraft, including equipment incorporated or used therein, used by State institutions
24. The transport of goods on the Rhine and the canalized Moselle, and transactions linked thereto
25. The supply, modification, repair, maintenance, chartering and hiring of warships
26. Transactions concerning gold other than gold for industrial use
27. The services of travel agents referred to in Article 26, and those of travel agents acting in the name and on account of the traveller, for journeys within the Community

#### ANNEX G RIGHT OF OPTION

1. The right of option referred to in Article 28 (3) (c) may be granted in the following circumstances: (a) in the case of transactions specified in Annex E:

Member States which already exempt these supplies but also give right of option for taxation, may maintain this right of option

- (b) in the case of transactions specified in Annex F:

Member States which provisionally maintain the right to exempt such supplies may grant taxable persons the right to opt for taxation

2. Member States already granting a right of option for taxation not covered by the provisions of paragraph 1 above may allow taxpayers exercising it to maintain it until at the latest the end of three years from the date the Directive comes into force.
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